Halo Lighting Division of McGraw Edison Company *and* Independent Radionic Workers of America, affiliated with National Federation of Independent Unions of America and International Brotherhood of Electrical workers, Local 134, AFL-CIO, Party in Interest. Cases 13-CA-18948 and 13-CA-19105[1]

December 15, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On January 30, 1981, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, the General Counsel, Respondent, and the International Brotherhood of Electrical Workers, Local 134, AFL-CIO (hereafter IBEW), filed exceptions and supporting briefs, and the General Counsel, Respondent, and the IBEW filed briefs in response to opposing parties' exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The General Counsel excepted to the failure of the Administrative Law Judge to find that statements made by Respondent's president, Thompson, and several of Respondent's supervisors, to various employees, that if the IBEW, the incumbent Union, lost the impending election installation electricians represented by that Union would refuse to install Respondent's products which would cause a loss of sales for Respondent and a resultant loss of work for the employees. We find merit in this exception.

Respondent is a manufacturer of lighting fixtures which it sells to distributors and contractors mainly for installation in commercial buildings. It began operations in 1955 and, since shortly thereafter, has been party to collective-bargaining contracts with the IBEW covering its production and maintenance employees. In 1979,[3] a number of Respondent's employees including IBEW stewards became dissatisfied with IBEW's representation, and contacted the Independent Radionic Workers of America (hereafter IRWA), and, on June 8, an election petition was filed.

Throughout the vigorously run campaign, Respondent supported the reelection of the IBEW through a series of written communications to the employees and a preelection speech by Thompson. It stressed its concern over the possible loss of the use of the IBEW label on its product, and predicted a refusal by electrical installers represented by the IBEW to handle the product, which in turn would result in the loss of sales and the loss of a great number of jobs. Although the General Counsel did not allege that the written communications and Thompson's speech were violative of the Act, it did allege that the same message conveyed by Thompson and several supervisors in conversations with employees threatened employees with loss of jobs in violation of Section 8(a)(1).

The Administrative Law Judge dismissed the 8(a)(1) allegations concerning these statements by Thompson and the supervisors, although he did find that predictions as to the loss of specific numbers of such jobs were unlawful. Relying on the doctrine enunciated in the Supreme Court's decision in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), that a company may predict the precise effect unionism will have on it if the prediction is based on objective fact "to convey an employer's belief as to demonstrable probable consequences" beyond the employer's control, the Administrative Law Judge concluded that the evidence presented by the Employer in support of its belief that the loss of the IBEW label would have such a detrimental effect on its business was substantial, and unrebutted by any evidence presented by the General Counsel that such an effect would not result.

The evidence presented by the Employer in support of its predictions included an incident which occurred in Missouri in 1956 when electricians refused to install Respondent's incandescent lighting because it did not have the IBEW label, an incident which caused Respondent to seek out the IBEW and initiate its contractual relationship with that Union; testimony that Respondent's major competitors all have the use of the IBEW label; that 90 percent of Respondent's sales are in the United States and that 95 percent of its sales are to distributors or contractors for use in large commer-

[1] By telegraphic order dated October 23, 1981, the General Counsel's motion to sever Case 13-RC-15139 was granted and that case was remanded to Region 13 for further processing.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We agree with the General Counsel that the notice to employees should be posted in both English and Spanish at Respondent's facility, and we shall order such posting.

[3] All events occurred in 1979.

cial construction; that on occasion Respondent's product has gone out without the label, resulting in its sending the labels to follow the product, or confirming that it was still affiliated with the IBEW; that Respondent's eastern regional sales manager, in sales presentations, lets the customers know that Respondent is an IBEW company, and that in his past experience as a journeyman electrician he looked for the IBEW label on products, and he did not recall seeing other union labels on electrical products; and testimony of the business representative of the IBEW that it was normal for journeymen electricians to check to see if an electrical fixture bore the label of an AFL-CIO affiliate and, if not, to call the union hall to see if the manufacturer was a union company. The company would then be notified to send the labels to the jobsite.

Noting the failure of the General Counsel to refute the foregoing testimony or to present evidence that journeymen electricians would be willing to install fixtures without the IBEW label, or that any of Respondent's competitors used a label other than that of the IBEW, the Administrative Law Judge found Respondent's evidence sufficient to support its belief on which it based its predictions.

Contrary to the conclusions reached by the Administrative Law Judge, we do not beleive that Respondent's evidence constitutes objective fact supporting the belief that the election of IRWA rather than the IBEW by the employees would bring about the dire consequences predicted by Respondent, i.e., the loss of the employees' jobs.

The only direct evidence relating to the refusal of electricians to install Respondent's product concerns an incident which took place in Missouri 25 years ago, an event we find too remote in time to support Respondent's stated belief. We realize, however, that Respondent has since that time had a bargaining relationship with the IBEW. The remainder of Respondent's evidence on this issue may indicate Respondent's belief in the advantages of having a contractual relationship with the IBEW; the loyalty of IBEW members to their Union and their concern for the protection of the organizational gains made by it; and the success the IBEW has had in organizing the electrical industry, but it does not show that journeymen electricians as a group will refuse to install the product of a company which does not have a contractual relationship with the IBEW, or that the IBEW would act contrary to the Act by inducing its members to refrain from handling the products of such a company. Thus, we find that Respondent's evidence does not demonstrate an objective basis to support Respondent's predictions that the loss of the IBEW label will cause IBEW installers not to handle its product, cause a substantial loss of business, or result in a substantial loss of jobs.

These unsupported predictions made by Respondent were serious in nature in that they posed a threat to the very livelihood of the employees. In such circumstances, an employer who wishes to predict such consequences based on the outcome of a Board election must use care to assure that its predictions are based on objective fact concerning matters beyond its control, and will not convey the impression that it will take steps on its own to adversely affect the employment status of its employees. We find here that the Employer failed to use such care in that its prediction had no sufficient basis in fact. Further, in the context of other preelection conduct engaged in by Respondent in violation of Section 8(a)(1), including, *inter alia*, threats of discharge, loss of benefits, plant relocation, reduced wages, and threats to report employees to the Immigration Service if they supported the IRWA rather than the IBEW, we find that Respondent made its predictions relating to job loss in a conscious effort to further instill fear in its employees. This infringed upon the employees' rights to freely engage in Section 7 activities protected by the Act. We therefore find that the statements made by Thompson and Supervisors Lizordi, Monaco, Hueuink, Orabutt, Baez, Saez, and Jeffress concerning the refusal of installers to handle Respondent's product, which would result in a loss of business and loss of jobs, violated Section 8(a)(1) of the Act.

We find merit also in the General Counsel's exception to the failure of the Administrative Law Judge to find that Respondent violated Section 8(a)(1) by focusing the blame for the cancellation of the company picnic on the IRWA.

The Company had planned its second annual fiesta day, a picnic expected to attract about 700 employees, for July 7. During the last week of June, Supervisor Hueuink began receiving reports that there might be violence at the picnic between the IRWA and IBEW supporters, instigated by some of the internal organizers for IRWA. Respondent decided to cancel the picnic in light of these reports and, on July 5, it issued a memo announcing the cancellation of the picnic containing the following language:

> Information has come to our attention that the organizers for the Independent Radionic Workers of America (IRWA), the independent union that is attempting to become the bargaining agent for our plant production employees, although not invited to our picnic,

> have made known their intentions to appear there. Recent incidents related to their organizational activities have created increased tensions and aroused feelings among our employees. We believe the picnic would be used by them as a forum to pursue further organizational activities, and if that happens, it would only interfere with the purpose of our picnic. Since adequate security to deal with such a condition is not available, we believe it is in everyone's best interest to avoid such an incident; and, as a precaution, we are cancelling the picnic.

The Administrative Law Judge found that although Respondent's information concerning nonemployee organizers' plans to attend the picnic may not have been accurate, Respondent did have legitimate concern based on the reports of possible violence to cause it to cancel the picnic, and that its purpose was not to interfere with the rights of its employees. He therefore found no violation of the Act.

We agree that based on the reports of possible violence Respondent was justified in canceling the picnic. However, the memo announcing the cancellation unjustifiably placed the blame for the cancellation on the IRWA, particularly the nonemployee organizers of that Union. The evidence shows that Respondent had no cause to believe that these organizers had planned to attend the picnic. Rather it shows that the information received by Respondent pertained only to the possibility of employee organizers causing confrontations, not to persons "not invited to our picnic," as stated by Respondent in its memo. Although Respondent may have feared a confrontation between supporters of the two Unions at the picnic, it is clear from the memo that Respondent used its announcement to place the blame for this loss of a benefit on the Union it opposed in the election without any basis in fact. This we find interfered with the employees' Section 7 rights, and violated Section 8(a)(1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Halo Lighting Division of McGraw Edison Company, Elk Grove Village, Illinois, its officers, agents, sucessors, and assigns, shall:

1. Cease and desist from:

(a) Promising employees benefits and wage increases if they vote for International Brotherhood of Electrical Workers, Local 134, AFL-CIO, in a Board-conducted election.

(b) Promising employees better jobs if they support the above-named labor organization in a Board-conducted election.

(c) Threatening to lay off half the employees and half the supervisors, and reduce salaries to $2.90 if Respondent loses the use of the IBEW label, thereby unlawfully restraining and coercing employees to vote for the above-named Union in a Board-conducted election.

(d) Threatening to lay off employees and reduce salaries if the employees try to put in a new union, thereby unlawfully restraining and coercing employees to vote for the above-named labor organization in a Board-conducted election.

(e) Threatening to move Respondent's plant to another location if the employees do not vote for the above-named labor organization in a Board-conducted election.

(f) Threatening that employees would have to start with minimum wages or at the bottom of Federal rates if the employees do not vote for the above-named labor organization in a Board-conducted election.

(g) Soliciting employee grievances to induce employees to vote for the above-named labor organization in a Board-conducted election.

(h) Threatening to call the Immigration Service if the employees vote for Independent Radionic Workers of America, affiliated with National Federation of Independent Unions of America, in a Board-conducted election.

(i) Threatening to discharge or otherwise discriminate against employees because of their support for the above-named Independent Radionic Workers of America.

(j) Informing employees that the loss of the IBEW label would result in the loss of business for Respondent because IBEW electricians on construction sites would not install Respondent's products, with a consequent loss of jobs for Respondent's employees.

(k) Informing employees that the company picnic was canceled because of the intention of nonemployee organizers for the Independent Radionic Workers of America to attend, thus causing a security problem.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its plant in Elk Grove, Illinois, copies of the attached notice marked "Appendix" printed

both in English and Spanish.[4] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the National Labor Relations Act not found herein.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT promise our employees benefits and wage increases if they vote for International Brotherhood of Electrical Workers, Local 134, AFL-CIO, in a Board-conducted election.

WE WILL NOT promise our employees better jobs if they support the above-named labor organization in a Board-conducted election.

WE WILL NOT threaten to lay off half of our employees and half of our supervisors and reduce salaries to $2.90 if our Company loses the right to use the IBEW label.

WE WILL NOT threaten to lay off employees and reduce salaries if our employees try to put in a new union.

WE WILL NOT threaten to move our plant to another location if our employees do not vote for the above-named labor organization in a Board-conducted election.

WE WILL NOT threaten that our employees will have to start with minimum wages or at the bottom of Federal rates if they do not vote for the above-named labor organization in a Board-conducted election.

WE WILL NOT solicit grievances from our employees to induce them to vote for the above-named labor organization in a Board-conducted election.

WE WILL NOT threaten to call the Immigration Service if our employees vote for Independent Radionic Workers of America, affiliated with the National Federation of Independent Unions of America, in a Board-conducted election.

WE WILL NOT inform employees that the loss of the IBEW label would result in the loss of business for us because electricians on construction sites would not install our products, with a consequent loss of jobs for our employees.

WE WILL NOT inform employees that the Company picnic was canceled because of the intention of nonemployee organizers for the Independent Radionic Workers of America to attend, thus causing a security problem.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

HALO LIGHTING DIVISION OF MCGRAW EDISON COMPANY

DECISION

STATEMENT OF THE CASE

ABRAHAM FRANK, Administrative Law Judge: The original charge in this consolidated case was filed on July 24, 1979.[1] A second charge was filed on September 12. The consolidated complaint, alleging violations of Section 8(a)(1) and (2) of the National Labor Relations Act, as amended, herein called the Act, issued on September 26. The hearing was held on various dates between March 4 and 21, 1980, inclusive, in Chicago, Illinois. All briefs filed have been considered.[2]

At issue in this case are questions whether Respondent engaged in various acts of interference, restraint, and coercion and unlawful assistance to the incumbent union during the course of an organizational campaign conducted by the Charging Party prior to a Board election on August 29. Also involved are the Petitioner's objections to the conduct of the election.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PRELIMINARY FINDINGS AND CONCLUSIONS

The Respondent, Halo Lighting Division of McGraw Edison Company, is engaged in the manufacture and distribution of lighting fixtures and related products at its plant in Elk Grove Village, Illinois, the only facility involved in this proceeding. During the last fiscal or calen-

[1] All dates hereafter are in 1979 unless otherwise indicated.

[2] The joint motion of the parties to correct the exhibits and the General Counsel's motion to correct the transcript are granted.

dar year Respondent manufactured, sold, and shipped finished products valued in excess of $50,000 directly to customers located in States other than the State of Illinois.

I find that Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Independent Radionic Workers of America, affiliated with National Federation of Independent Unions of America, hereinafter the IRWA, and International Brotherhood of Electrical Workers, Local 134, AFL–CIO, hereinafter the IBEW, are labor organizations within the meaning of Section 2(5) of the Act.

II. PREFACE

Halo, a then small manufacturing plant, was founded in 1955 and operated out of a single facility on North Orchard Street in Chicago, Illinois. Dan T. Thomson, president of the commercial products group of McGraw Edison Company and president of Halo Lighting Division of McGraw Edison Company at times material herein, was one of the original three employees. Then, as now, the Company manufactured incandescent lighting fixtures, at that time its only product line.

Halo began operations as an unorganized plant. Its first major commercial sale for incandescent fixtures was made to the Harry S. Truman Memorial Library in Independence, Missouri. After the fixtures arrived at the jobsite, the Company was informed that the contractor and the electricians on the job were refusing to install the fixtures because they did not bear the IBEW label. The Company sought counsel, contacted the IBEW, and shortly thereafter its employees were represented by that Union. Since then Respondent, as a member of the Chicago Lighting Equipment Manufacturing Association, has had a continuous bargaining relationship with the IBEW covering its production and maintenance employees under a series of contracts, the last of which terminated on August 31.

Sometime in 1979 a number of Respondent's employees, including most, if not all of the IBEW stewards, particularly the chief steward, Jesus Gonzalez, became dissatisfied with the representatives assigned by the IBEW to serve the employees at the Halo plant. Gonzalez and other employees contacted the IRWA with the view of establishing that Union as their collective-bargaining representative in place of the IBEW. On June 8 the IRWA filed its petition in this case. Thereafter, Ed Lane and Elizer Medina, the then representatives for the IBEW, were replaced by Joe Kingsley and Roy L. Cortes. Cortes, a business representative of Local 1031, IBEW, was assigned to Local 134 for work at the Halo plant during the 3-month period prior to the election of August 29. A large proportion of Respondent's employees are of Hispanic origin and fluent only in Spanish. Cortes speaks English and Spanish and communicated with all employees in either language.

From June 5, the date the IRWA began its campaign, until August 29, the date of the Board election, Respondent and both Unions campaigned vigorously. Respondent supported the reelection of the IBEW by means of, *inter alia*, a series of written communications to its employees and a final speech by Thomson on August 23 to the employees. Respondent stressed particularly its concern that the loss of the IBEW label on its lighting fixtures would result in a loss of business and a loss of a great number of jobs.[3]

On July 19 Thomson wrote the employees that bargaining would start from the beginning with a new union and the employees could lose the wages and benefits they now had if they elected the IRWA. On July 25 Thomson pointed out to the employees that the IRWA was losing money and that the employees the IRWA represented at Zenith had lost about 12,500 jobs since 1968; that representation of the employees by the IRWA at Halo could cause the Company to lose business and many of the employees lose their jobs. On July 31 Thomson pointed out to the employees that Respondent had expanded from 200 employees in 1968 to 1,100 employees in 1979 and asked the employees to compare Halo's growth to the IRWA's decline and jobs lost at Zenith. On August 2 Thomson responded to an IRWA bulletin of August 1, stating that it was not true that the IRWA represented journeymen electricians and repeated Respondent's opinion that the loss of the IBEW label could drastically reduce the number of fixtures sold, which could mean a significant loss in sales, resulting in a loss of jobs for many employees at Halo.

On August 10 Thomson again called for support of the IBEW. He stated that the IRWA was not a recognized electrical union and their label did not mean anything to Halo's customers, that thousands of IRWA members had lost their jobs. In an August 20 memo Thomson informed the employees that a group of Northwest Airlines employees had switched from an AFL–CIO union to an independent union and then stated that it took the new union a year and a half to negotiate the first contract, that the pay increase, although retroactive, was not received by the employees for 20 months, and that the new contract left the employees behind the pay and benefits given by other airlines. The memo concluded with the question, "Could these things happen here?"

On August 22 Thomson again challenged the truth of statements made by the IRWA, asserting that the IRWA had lost benefits for its members in the first contract negotiated after the sale of Zenith's hearing aid division, setting out specific lost benefits with an attached chart. In a final memo on August 28 Thomson reminded the employees that the then-current contract with the IBEW would expire on August 31 and that the employees' failure to choose the IBEW in the election of August 29 would mean that the Company would lose the right to

[3] In a letter dated July 6 Thomson wrote:

> We think it is important that you know how your Company feels about the decision you will be making and how it could affect your future. It is our sincere believe [sic] that it would be a serious mistake for our employees to vote for a change in their bargaining representative because if they do, it would mean that we could no longer affix the IBEW label to our products. Our present relationship with the IBEW, as your exclusive bargaining agent, enables us to place their union label on all the products we manufacture and it is especially important to the sale of Halo, Lite-Trend, and Power Trac assembly fixtures. IBEW electricians have, in some instances, refused to install "non-IBEW labelled fixtures." We are convinced if we lost the IBEW label it could affect a substantial part of our business and cause the loss of a great number of jobs.

display the IBEW label on its fixtures, a result that "could hurt both of us."

On August 23 Thomson made a speech to the assembled employees. During the course of the speech Thomson said, *inter alia*, that outsiders were attempting to tear them apart and "at times I felt as though they just might be trying to force us to temporarily close the plant"; that, "if the IBEW label is lost, we all could lose"; that the IRWA had falsely stated that the IBEW journeymen electricians would not refuse to install the Company's fixtures if the IBEW lost the election; that the Company's competitors would like to see the IRWA win and the Company to lose the IBEW label, business, and jobs; that thousands of IRWA members at Zenith had lost their jobs in the past few years; and that Thomson did not want to see that happen at Halo.

The complaint does not allege that any of the above written communications or the August 23 speech is unlawful and the General Counsel so stated on the record. Nevertheless, the General Counsel takes the position that alleged unlawful statements orally made by supervisors and found to accord "exactly" to "Respondent's script" are unlawful.

Normally, the failure of the General Counsel to allege known conduct of Respondent within the 10(b) period as unlawful would preclude me from ruling on the legality of such conduct. The General Counsel's insistence, however, on litigating the legality of oral statements "exactly" the same as the written statements puts such statements, whether written or oral, in issue. An unlawful threat is unlawful whether written or spoken. Although awkwardly presented, the issue of Respondent's right under Section 8(c) of the Act to refer to the possible loss of the IBEW label and the consequent loss of business and jobs was fully litigated in this case.

The propriety of the Respondent's campaign literature is raised by the IRWA as an objection to the conduct of the election. However, the IRWA rested its case on the basis of the General Counsel's *prima facie* case of unfair labor practices. No evidence was offered challenging the accuracy of the facts and figures contained in Respondent's letters and communications to its employees.

III. THE FACTS

A. *Interference, Restraint, and Coercion*

1. Statements by supervisors

a. *By Supervisor Tony Lizardi*

Lizardi, a man of many talents, was, like many of Respondent's employees, of Puerto Rican origin. He was employed by Respondent as a supervisor in the shipping department during the campaign period from June to September. At the time of the hearing he was employed by the Department of Defense in the Defense Logistics Agency. Prior thereto he had been for a number of years a professor at the University of Puerto Rico, teaching labor law, labor history, accounting, finance, and business planning. In his varied occupations Lizardi had also managed a warehouse and had participated as part of management in dual union organizational campaigns.

Lizardi is fluent in English and Spanish. A loquacious and colorful individual, Lizardi undertook to educate Respondent's employees, some of whom spoke only Spanish, in the intricacies of labor law, including policies of the National Labor Relations Board, textbook references to the AFL-CIO Industrial Union Department, and the necessity for good-faith negotiations in collective bargaining. In his many conversations with individuals and groups of employees, Lizardi stressed particularly the necessity to retain the IBEW label and the possibility of extended negotiations if a new contract had to be negotiated with a new union. So erudite and forceful were Lizardi's arguments that several employees would shout when they saw Lizardi approaching, "Hey, don't talk to Tony. He's going to make you dizzy, he's going to make you dizzy." At times Lizardi would drive home his point with an understandable metaphor. Speaking of the negotiating process, he explained it was like trying to convince a girl. "If you've gone out with her once and you nail her down there, you know the second time around it's going to be easier than the first time. You had to work real hard at it, didn't you?"

According to Lizardi and contrary to the testimony of witnesses for the General Counsel, he made no threats or promises to the employees to induce them to vote for the IBEW rather than the IRWA. He told them there was no way the salary matter could be touched before a Board election. When the employees argued they did not need the IBEW label he told them, "[I]f the lamps do not go out on the truck, because they do not order, the clients do not order, there is no need to do any one of them. If there is no need to need any lamps, there is no need for people to build lamps. And this would affect us all including me." In explaining Respondent's letter of August 20, relating to the strike at Northwest Airlines, Lizardi pointed out that in that case the Teamsters, a newly elected union, did not even manage to get the same benefits that the industry had or that the employees had under a different union. If the employees elected a new union at Halo, "negotiations could carry on for God knows how long" since all the contract language would have to be negotiated anew. When an employee asked, "Well, why do they want to give us the minimum wage?" Lizardi responded, "Well, it's up to the negotiators, you know, to determine whether they would accept that or not, but after a long negotiation, necessarily they can offer you whatever they think they can afford, whether that's included or not."

Five witnesses for the General Counsel, three of whom had been discharged by Respondent between August 31 and October 5 and all of whom were no longer employed by Respondent, testified that Lizardi made more specific and forceful arguments on behalf of the IBEW:

(1) *Santiago (Chago) Cabrera* began working for Respondent in 1970 and was discharged on August 31. Lizardi was Cabrera's supervisor in the shipping department. During the months of June, July, and August Cabrera, a strong and vocal supporter of the IRWA, spoke to Lizardi about the unions two or three times a day.

Cabrera testified that in mid-August Lizardi called Cabrera into Lizardi's office and told Cabrera that if he kept quiet and kept calm and helped to calm down the other employees Lizardi would get Cabrera more money and more benefits. On this and other occasions Lizardi asked Cabrera if he belonged to the new (IRWA) or old (IBEW) union. Cabrera replied that he was 100 percent for the new union. Lizardi also said that if the IRWA won the election the employees would go back to making $2.90 per hour. Cabrera told Lizardi that Cabrera would continue talking for the IRWA. Following his conversation with Lizardi, Cabrera told other employees that Lizardi had offered Cabrera money to keep quiet and calm the other employees down. Cabrera told the employees he was 100 percent for the IRWA.

Cabrera testified that in other conversations with Lizardi during this period, at times when they were alone and at times in the presence of other employees, Lizardi said that if the IRWA came into the plant the Respondent would pay the employees $2.90 per hour, and that they would lay off half the employees and maybe even lay off half the supervisors.

Cabrera also testified that he and Lizardi had lunch on one occasion, that they were late returning to work, and that Lizardi took care of Cabrera's card for punching in purposes. During the luncheon Lizardi told Cabrera that if the employees continued to try to put in a new union the same thing would happen at Halo that happened in other companies where the employees put in a new union, it ended with employees laid off and salaries reduced.

Cabrera testified further that every time Lizardi talked about the Union Lizardi would say if the employees did not vote for the IBEW Respondent could move the Company to California or any place because McGraw Edison was a big company and had a lot of money.

Cabrera testified, with respect to the IBEW label, that Lizardi would start his conversations with the statement that if the IRWA came in the Company would lose the use of the IBEW seal, and that they would have to lay off half the employees, lay off some of the supervisors, and reduce the salaries to $2.90.

(2) *William Velasquez*, employed by Respondent in the shipping department in 1974, was discharged on September 12. He testified that he and about 20 other employees met with Lizardi during working time on or about July 30. Lizardi told the employees that they should vote for the old union (IBEW) and he would take care of everything for them; he would go to personnel and try to get the employees a raise of 25 cents per hour.

Velasquez testified that during the period from July to August he spoke to Lizardi on two other occasions, once in the company of other employees and once alone. In these conversations Lizardi spoke of a strike at an airplane factory where another union entered and the employees lost a lot of money. Lizardi said that the same thing would happen at Halo if another union came in—a lot of jobs would be lost. Lazardi spoke of the IBEW labels, that without the labels the electricians would not install the Company's products and the employees would lose jobs if the IRWA came into the Company. Lazardi also said that the employees' salaries would be lower.

(3) *Dionisio Perez*, employed by Respondent in February 1976, in the shipping department, was discharged on October 5. He testified that Lizardi spoke to Perez and other employees before working time every day for about an hour during the period from July to August. Lizardi told Perez that if the employees did not vote for the IBEW there would be loss of work, loss of production; the employees would lose benefits; they would have to start with a new contract and minimum wages.

Perez testified that Lizardi compared the employees working at Zenith represented by the IRWA with those represented by the IBEW and said that the former earned less than the latter, Lizardi said that if the employees voted for the IBEW they could get a good contract; if they did not vote for the IBEW the plant could move to another location.

Perez testified further that Lizardi told the employees who gathered around him that he could talk to Thomson to set up a meeting with them and whatever they needed, if they needed an increase, they could talk to Thomson.

Perez also testified that a few days before the election Lizardi said that if the IBEW lost the election the Company would not have the label and, as a result, there would be a loss of production and a lot of layoffs.

(4) *Pedro Fortis*, who was employed by Respondent as an order filler in the shipping department from August 29, 1978, to November 28, testified that he had four or five conversations with Lizardi during the period from June to August.

Fortis testified that in his first conversation with Lizardi in June the latter said that if the IBEW lost there would be a lot of people who would be laid off and the Company would move the factory to another place.

Fortis also testified that Lizardi said that if the employees supported the IBEW and the IBEW won the election Lizardi would take the employees out to eat and they could drink what they wanted. If the IRWA won the election the Company would pay the employees $2.90 per hour instead of the $5.17 an hour the employees were making and the employees would not have any kind of benefits.

Fortis testified further that all of his conversations with Lizardi, including a conversation a week before the election, were almost to the same effect.

In one of the above conversations Lizardi said that if he could legally find out who voted in favor of the old union (IBEW) he would try to get the employees a 25-cent-per-hour increase.

During some of the conversations employees would ask Lizardi why the label was so important. Lizardi explained that if the IBEW lost the election the Company would not be able to use its label and therefore it would lay off employees and move the factory.

(5) *Francisco Lopez* was employed by Respondent in the shipping department as an order filler under the supervision of Angel Santiago from August 29, 1978, to August 24, 1979.

Lopez testified that he and six or seven other employees met with Lizardi in the shipping section of the Lite Trend area in mid-August. Lizardi was carrying some

handbills and asked the employees if they had received them. Lopez asked what Lizardi thought was the best thing for the employees to do. Lizardi said, "Stay with the one you have, because voting for a new union is like throwing your salaries away and no benefits." Lopez asked Lizardi what he meant. Lizardi said, "If the IRWA wins we will have to negotiate, start from the bottom on the federal rates and then we would have to start from new benefits."

Lopez testified further that in early August he and two other employees were in the cafeteria during their breaktime. Lizardi approached them and said, "You look like smart guys. You speak English, write English and understand English. You could have a better job if you stick with us." Lopez said nothing.

In resolving credibility as to these witnesses I have taken into consideration the probability that the witnesses for the General Counsel may have misunderstood or misinterpreted much of what Lizardi read to them from technical books or told them about negotiation from "Day One" or the need for the IBEW label to sell Respondent's products. It is understandable that some of them would get dizzy listening to him or react angrily by calling him a liar. As Lizardi conceded, the employees with whom he was dealing were highly emotional, impatient people. They were poorly or not at all educated in a formal sense. Certainly, at some point Lizardi, himself highly articulate and knowledgeable, must have realized that he could not accomplish his objective of persuading them to vote for the IBEW by showing them technical treatises and talking about good-faith collective bargaining. It may well be that Lizardi did not make all of the statements in *haec verba* attributed to him by the General Counsel's witnesses, several of whom were not impressive.[4] But I cannot believe he made none of them. Lizardi's own testimony as to what he told them is too bland (except for metaphors), too pat, and too general to be convincing. It has none of the sharp sting and directness that might be expected from an outspoken, direct, and passionate individual, such as Lizardi. It was, after all, his assigned job to persuade these simple, but very stubborn employees that they had no real choice but to vote for the IBEW. The hard points of impact and persuasion found in Respondent's written material are mirrored in some of the testimony of the General Counsel's witnesses, but with added force. In the absence of a more specific and believable version of what Lizardi, in fact, may have told the employees in his vigorous and persistent compaign to insure victory for the IBEW, I credit the testimony of witnesses for the General Counsel over Lizardi.

b. *By Supervisor Vince Monaco*

Luz Velasquez, who was employed by Respondent from September 26, 1975, to August 20, 1979, testified that on a day in July she was translating into Spanish for a fellow employee a campaign letter about the IBEW label. Monaco interrupted her conversation and said, "I don't want to brainwash you, but this is what the paper says, we could lose our job." Monaco explained that the IBEW journeymen electricians would not install a part that did not have their union label on it; that the Company would not be able to sell the fixtures; that the employees could lose their jobs; and that he might lose his job too.

While Velasquez' testimony was somewhat inconsistent, including statements made in her affidavit, I am satisfied that the above testimony accurately reflects her conversation with Monaco and it is credited. Monaco did not testify.

c. *By Supervisor Daniel Hueuink*

Dionisio Perez, whose testimony is discussed above, also testified that in late July or early August he and other employees had a conversation with Hueuink, then a division of employee relations manager, in the shipping department. Perez asked Hueuink why they should keep the IBEW label; if the IRWA won the election they could use the label of that Union. Hueuink responded that he did not want that to happen because if the IBEW lost the election the electricians would not want to install the lamps; if that happened there would be layoffs, they would lose benefits, and they would get a new contract at a minimum salary. On cross-examination Perez denied that Hueuink had said anything about company sales if the lighting fixtures were not installed or that there was a discussion of contracts. However, Perez conceded that Hueink said the Company would sit down and negotiate a new contract if the IRWA won the election, but that they had to start with new benefits.

Hueuink testified that on the above occasion, at Lizardi's request, Hueuink spoke to the employees about the IBEW label. Hueuink told the employees that without the IBEW label the IBEW electricians on the construction site would probably not install the fixtures and thus the Company could have a loss of sales. Hueuink indicated that a reduction in sales could reduce employment. Hueuink also told the employees that if the IRWA won the election wages and benefits would have to be negotiated.

Hueuink testified in a clear and straightforward manner. I credit him over Perez as to this conversation.

d. *By Supervisor Castor Colon*

Pedro Fortis, whose testimony is discussed above, also testified that he spoke to Colon, a supervisor in the shipping department, about the Union three or four times in August. Colon said if the IRWA won the election there was a good probability that many of the employees would lose their jobs and there was a possibility that the factory would move to another location. On several occasions during this period Colon would give the employees a company letter saying, "Here is a paper from the Company" and explain to those who did not understand English what it said.

William Velasquez, whose testimony is discussed above, also testified that he spoke to Colon on one occasion in early August in the presence of other employees. Colon said that the labels could not be changed; that if they changed, the electricians would not be able to install the lamps in any part of the State; that if the IRWA won the

[4] See below in sec. 1(d) findings with respect to William Velasquez.

election many of the employees would lose their jobs; that salaries would be lowered and there would be a lot of layoffs; the Company would be obliged to move the plant to another location.

While Colon conceded that he had distributed company literature to the employees and that he spoke to Velasquez twice a week during the period prior to the election about softball, Colon denied that he ever discussed the Union or that he had made the statements attributed to him.

Velasquez' affidavit to the Board does not mention his conversation with Colon and at the hearing Velasquez' testimony as to whether he had discussed his testimony with the General Counsel in preparation for the hearing was evasive and contradictory.

Colon, however, was a most unimpressive witness. I cannot believe in this hotly contested campaign that he never discussed the desirability of voting for the IBEW rather than the IRWA with employees under his immediate supervision and with whom he was in daily contact. Velasquez' testimony corroborates that of Fortis. I credit Velasquez and Fortis over Colon.

e. *By Traffic Manager Charles Orabutt*

Pedro Fortis also testified that on several occasions 2 or 3 weeks before the election Orabutt told Fortis and other employees that if the IRWA won the election the majority of the employees would be laid off and would lose their jobs and the label was very important for the Company to be able to sell the lamps. Orabutt spoke in English, which was translated for Fortis into Spanish. However, Fortis, who has a limited ability to understand English, testified that he was able to understand what Orabutt said in English.

Orabutt testified that in mid-August he was asked by Frank Lopez in the presence of Fortis and other employees why the Company's products could not use the IRWA label instead of the IBEW label. Orabutt told the employees that the IRWA label was not the type of label that could be recognized in the electrical industry; if the IBEW label were not on the product it could be a problem if the electricians did not install it; the loss of the IBEW label would mean a loss of sales for the Company; it would mean the loss of jobs because of the loss of business; there would be layoffs throughout the Company.

I find no serious questions of credibility in the testimony of these two witnesses. Fortis' knowledge of English is quite limited and he may well have understood Orabutt to have made the statements attributed to him. However, I am satisfied that Orabutt's version of what he, in fact, told the employees on the above occasion is more accurate and I credit Orabutt to the extent his testimony varies from that of Fortis.

f. *By Supervisor Gomer Baez*

Jesus Gonazlez, who was employed as a setup man from October 3, 1977, to September 1979, testified that on or about August 22 he overheard a conversation between Baez and an employee, whom Gonzalez, himself a native of Puerto Rico, believed to be of Mexican origin. Baez told the employee that if the IRWA won the election the Company would call the Immigration Service and a lot of people who were here without legal right would get into trouble. Gonzalez stepped back and said, "Gomer, what are you saying?" Baez replied in Spanish, "You better keep going, you are hot."

Angela Sanchez, who was employed by Respondent for 3 years prior to and at the time of the election, submitted a pretrial affidavit to the General Counsel. Sanchez was not employed at the time of the hearing and her address was unknown. The General Counsel sought to subpena Sanchez at her last known address. The subpena was returned unclaimed. In these circumstances her affidavit was offered and received in evidence.

Sanchez stated in her affidavit that 2 or 3 weeks before the election Baez told Sanchez that Baez knew she was for the new Union and that she was running the risk of being fired. Baez said if the IBEW won Sanchez would be fired and that she was the first one on the list. Baez also said that he would see Sanchez in line waiting for compensation with a cup of coffee and a doughnut in her hand. A day before the election Sanchez reported to Foreman Ivan Saez what Baez had said about Sanchez risking her job. Saez said that Baez had no authority to say that to her. Saez did not testify.

Sanchez stated further that about 2 or 3 weeks before the election Baez and Saez came to the production line and stopped work to talk to about 15 employees. Baez said that if the new Union (IRWA) won the Company would lose the old Union's (IBEW) label and electricians would not install Halo lamps; the Company's merchandise would not get out because when the electricians saw the merchandise did not have the label they would send it back and the employees would be laid off. Saez said that the label was very important and that losing the label would mean losing the merchandise.

Baez denied making the statements attributed to him by Gonzalez and denied telling Sanchez she was running the risk of being fired or that he would see her in line waiting for compensation. Baez testified that he handed out literature to the employees once or twice a day and sometimes more during the preelection period. He talked to the employees about the label and other kinds of problems, but denied ever saying that the employees would be better off with the old union.

Baez was in daily contact with the employees in handing out literature and answering questions. His testimony as to what he actually told the employees is vague and his contention that he never said that the employees would be better off with the old Union (IBEW) is, at least, evasive. Gonzalez' testimony of a veiled threat of discharge is consistent with Sanchez' testimony of an actual threat of discharge. I credit Gonzalez and Sanchez over Baez.

g. *By Director of Distribution Joe Jeffress*

Santiago Cabrera, whose testimony is discussed above, testified that during the last 2 weeks in July he was called to a meeting in Jeffress' office along with Zoilo Rodriguez and Francisco Lopez. Jeffress spoke in English. Cabrera's ability to understand English is limited. At

the hearing most of his testimony was given through an interpreter. Cabrera testified that he understood some of what Jeffress said and Lopez translated other portions. According to Cabrera, Jeffress asked the employees if more money or more benefits were the main thing the employees wanted. Cabrera said, "Yes, it is, more money, more benefits, more something, you know." Jeffress said he would try; he would go to Thomson and maybe Thomson could find something for everybody. Jeffress said the Company could move to some place and lay off the foremen. If the new Union won the election the Company would lay off half the people, maybe 200 to 300 people and the foremen too. On several other occasions Jeffress told Cabrera the employees would lose a lot of benefits if the new Union came in; the new Union was small and could not support a company the size of Halo.

Lopez testified that he recalled the meeting in Jeffress' office with Cabrera and Rodriquez, but did not recall what was said. Rodriguez did not testify.

Jeffress testified that he was informed by Lizardi that several employees wanted to talk to Jeffress privately about working conditions. Jeffress met with the above employees in his office about a month or a month and a half before the election. Lopez told Jeffress that the employees thought things were getting out of hand and all that the employees wanted was to correct some working conditions. Jeffress told the employees he could not make any promises and could not discuss the matter, but asked what some of the working conditions were. The employees said they wanted to talk to Thomson. Jeffress asked for the names of people who were concerned and what they wanted to talk about and he would see what could be done. Jeffress denied making the statements attributed to him by Cabrera. Thereafter, Lizardi gave Jeffress a list of names of employees. Jeffress gave the list to his boss, Greg Hege, vice president of operations. Subsequently, Hege told Jeffress that they could not have a meeting with the employees because they would be violating the law. Jeffress communicated this information to Lopez.

Jeffress also testified that he had a lengthy meeting with Lopez during this period and showed Lopez the IBEW label on a housing item. Jeffress pointed out to Lopez that a tradesman would not install the product if it did not have the label and that meant the Company would not sell its product. About this time Jeffress also had a discussion with Lopez about contract negotiations. Jeffress told Lopez that if the IRWA won the election they would have to start from the first page and the first letter; that with the IBEW the employees had a contract that had been developed over 20 years.

Jeffress testified in a frank and open manner, freely admitting he had discussed with Lopez the IBEW label and the advantage to the employees in contract negotiations if they voted for the IBEW rather than the IRWA. Lopez, on the other hand, had nothing to say about his conversations with Jeffress even though Lopez had translated a portion of Jeffress' remarks to Cabrera at the meeting in Jeffress' office. Nor was Lopez called on rebuttal to contradict Jeffress' testimony that Lopez was told by Jeffress that a meeting with Thomson could not be arranged because it would be unlawful. Cabrera's knowledge of English is poor and it may well be he misunderstood or misinterpreted Jeffress' remarks. In any event, in view of Jeffress' believable testimony and the failure of Lopez to confirm Cabrera's testimony or to contradict the testimony of Jeffress, I credit Jeffress over Cabrera as to the above conversation in Jeffress' office.

h. *By President Dan T. Thomson*

Concepcion Ocampo, who had been employed by Respondent for 6 years at the time of the hearing, testified that on a day in the early part of August she and about 20 other employees met with Thomson at the production line. Ocampo told Thomson the employees were confused by all the papers that had been passed out to them about the label and asked him to explain the situation to them. Thomson said the label used by the Company was recognized by the Electrical Workers Union and if the product did not bear that label they would refuse to install it. The employees asked why that was so since there were many other factories that were making lamps and did not use the label and still had sales. Thomson said there was no way that they could prove that and because of the label Halo was No. 1 in selling lamps. Thomson distinguished the situation where a lamp was sold in a store from the installation of a lamp at a construction site. Thomson said the electricians belonged to the same union and in refusing to install the products Halo would have less orders, less sales, and less work.

Ocampo also testified that prior to the election Thomson made a speech to the employees in the cafeteria; that he spoke about the label; that he read from a piece of paper; and that he said almost the same thing he had said to the employees on the production line in the above meeting.

Jesus Gonzalez: As indicated above, Gonzalez, despite his position as chief steward for the IBEW, was an original and consistent advocate of the IRWA. Gonzalez testified that Hueuink arranged a meeting between Gonzalez and Thomson on June 18 in Thomson's office. Thomson asked Gonzalez if Gonzalez knew what he was doing in bringing the new Union into the plant. Gonzalez said that he had not brought the Union in, but it could happen. Thomson told Gonzalez that if the Company lost the IBEW it would lose the label and that meant at least one-third of the employees would be laid off. Thomson asked Gonzalez to support the IBEW, to make the right decision. As Gonzalez was leaving, Thomson said, "Don't answer me today; answer me Monday." Gonzalez said, "O.K. I want an appointment with you Monday and I'll answer you Monday." In Gonzalez' meeting with Thomson on June 25 Thomson made substantially the same statements with respect to the loss of the label, the resultant loss of business, and the loss of jobs that Thomson stated in his speech to the employees a few days before the election. The conversation of June 18 was somewhat different in that Thomson repeated in a positive way that there would be a loss of jobs if the Company lost the right to use the IBEW label.

Thomson confirmed Gonzalez' direct testimony that they met on two occasions. Thomson, however, placed the first meeting on June 25 and the second between June 25 and July 6. According to Thomson, the meeting was suggested by Vice President of Manufacturing Bob Rieger and arranged through Gonzalez' line foreman. The meeting was initiated as a result of a request by Gonzalez that he be allowed more time during work to fulfill his responsibilities as shop steward. Thomson testified that the first meeting with Gonzalez was concerned only with this issue and that Gonzalez was granted half an hour in the morning and a half hour in the afternoon to attend to his stewardship duties. Thomson denied that there was any discussion of the IBEW label at this meeting. Thomson testified that the second meeting with Gonzalez occurred at Thomson's request and was due to Gonzalez' failure to adhere to the time limitation. During this meeting Gonzalez asked Thomson if what Gonzalez had been hearing about the IBEW label was actually the fact. Thomson did not recall how he responded, but thought he probably used the Truman Library situation as an example of the problem the Company would face without the IBEW label.

The record shows that Thomson drafted and distributed to subordinates a memo, dated June 26, referring to a meeting with Gonzalez on June 25 and authorizing a half hour in the morning and a half hour in the afternoon to permit Gonzalez to discuss employee problems relating to the interpretation of the contract.

The original notice of representation hearing issued on June 15 for a hearing on June 25, thereafter rescheduled to July 5, at which time the stipulation for an election was entered into.

On rebuttal Gonzalez testified that it was during a third meeting with Thomson that the question of additional time to perform his duties was discussed.

Although there is a great disparity between the economic and social positions of Gonzalez and Thomson, both men are men of high caliber. Both had much to lose or gain in the outcome of this proceeding and both testified with a certain wariness and, I am satisfied, without complete candor. On the one hand, Thomson was aware that Gonzalez was spearheading the drive for the IRWA. As the General Counsel points out, Thomson had never previously met with Gonzalez in a private interview. The issue of granting Gonzalez extra time to attend to his stewardship duties could easily have been arranged without the personal attention of the president of the Company. Moreover, the timing of Thomson's meeting with Gonzalez was at the outset of the IRWA's campaign, a few days before a scheduled Board hearing. On the other hand, Gonzalez did not mention during his direct and cross-examination that he and Thomson had discussed extra time for Gonzalez to attend to his stewardship duties. Only on rebuttal, following the introduction of the memo dated June 26, did Gonzalez concede that he and Thomson had discussed this topic. Gonzalez testified for the first time that there had been a third meeting, although he had previously testified that he had met with Thomson twice, on June 18 and 25.

The testimony of neither of the above witnesses can be credited in its entirety. I find that the two men met only on June 18 and June 25 and that the ostensible purpose of the meetings was the issue of time off for Gonzalez to attend to stewardship duties. I find Further that the issue of the IBEW label was discussed at both meetings and that Gonzalez' version of what Thomson said is believable and substantially accurate, except that I do not credit Gonzalez to the extent he testified that Thomson said that one-third of the employees would be laid off if the Company lost the IBEW label. Such a specific prediction would be inconsistent with all other written and oral statements by Thomson on this subject to employees generally and to Ocampo in particular.

2. Surveillance of union activity

As indicated above, IRWA organizational activity began on June 5. On that date James Weil, union director of the IRWA, Rick Bugajsky, Frank Woljak, and Tony Meccia, other IRWA representatives, arrived at the Halo parking lot at or about 6 a.m. Shortly thereafter Hueuink, Schrader, and several other supervisors arrived. Hueuink accosted the IRWA organizers and ordered them off the property. Thereafter, Weil and his coworkers passed out authorization cards on the easement of the driveway leading to the company parking lot. Schrader and other company supervisors were also on the parking lot between 6 and 7 a.m. on June 6, 7, and 8. Beginning on June 5 IBEW stewards Gonzalez, Ivan Cruz, Carmel Galarza, Ronald Loyo, and Tony Bea were engaged in soliciting employees to sign authorization cards for the IRWA. The supervisors noted this activity and overheard some of the conversations.

Hueuink and Schrader had received information on June 4 that there might be violence on June 5 in connection with the IRWA's organizational campaign. Schrader notified the police department on June 4 that the Company anticipated some difficulty on June 5 and requested their assistance. Between June 5 and 8 an estimated 100 to 500 employees milled about the parking lot in the early morning hours. There was considerable commotion, yelling, and screaming. On June 6 two employees, Frank Lopez and Pedro Reyes, engaged in some form of altercation, which was resolved by a police officer. Schrader made a note of this incident, but otherwise took no notes and did not record the names of employees signing or refusing to sign cards.[5]

3. Cancellation of Company's picnic

On May 2 Respondent issued a circular, announcing that the second annual Halo fiesta day would be held on

[5] On June 5 Gonzalez, Bea, and Galarza were suspended. Gonzalez filed an unfair labor practice charge with respect to these suspensions. The parties stipulated that the charge was dismissed by the Regional Director on the ground that any possible violation of the Act had been remedied. In these circumstances, contrary to the General Counsel, no inference can be drawn from these suspensions that Respondent's conduct served to highlight the danger to employees of passing out IRWA literature on company property. Employees do not have an absolute right to distribute literature at all times and in all places on company property. The Regional Director was satisfied to dismiss the charge without resolving the legality of Respondent's conduct. The General Counsel cannot have it both ways. So far as this case is concerned, the employees' reaction to the above suspensions is immaterial and irrelevant.

Saturday, July 7, for all internal personnel. The picnic, scheduled to last from 10 a.m. to 6 p.m., provided for various forms of entertainment, including swimming, tennis, softball, children's games, dancing, refreshments, and prizes. For the next several months additional bulletins were issued in English and Spanish requesting employees to sign up for the picnic and the various games. Respondent had purchased prizes to be distributed to the employees and their families. It was anticipated that about 700 employees would attend the picnic.

During the last week of June Hueuink began receiving reports of possible problems, including violence, that might occur at the picnic. Pedro Reyes, a member of the organizing committee, told Hueuink that Reyes had been questioned by employees about the use of knives and guns at the picnic; that he had heard that the IRWA advocates were going to attend and show everybody who was boss. Unfer, a nurse, warned Hueuink that there might be violence at the picnic, suggesting that the IRWA in-plant organizers Cabrera, Rodriguez, Gonzales, and Pedro Sanchez planned to attend and cause "trouble."

By memo dated July 5 Respondent canceled the picnic. Thomson explained the reason for the cancellation as follows:

> Information has come to our attention that the organizers for the Independent Radionic Workers of America (IRWA), the independent union that is attempting to become the bargaining agent for our plant production employees, although not invited to our picnic, have made known their intentions to appear there. Recent incidents related to their organizational activities have created increased tensions and aroused feelings among our employees. We believe the picnic would be used by them as a forum to pursue further organizational activities, and if that happens, it would only interfere with the purpose of our picnic. Since adequate security to deal with such a condition is not available, we believe it is in everyone's best interest to avoid such an incident; and, as a precaution, we are cancelling the picnic.

Weil testified that at an IRWA meeting on June 20 the officials of that union decided that IRWA organizers would not attend the picnic. During the 2-week period prior to the date of the scheduled picnic Weil informed Respondent's employees in English during the course of his handbilling activities in front of the Halo plant that IRWA organizers would not attend the picnic. Other IRWA representatives also made the same statement. However, the IRWA did not so inform the employees in its handbills or other publications. Nor did officials of Respondent contact the IRWA to determine whether or not IRWA organizers planned to be present at the picnic. The decision of the IRWA with respect to this matter was due, in part, to a concern that there might be a confrontation among competing groups at the picnic.

B. *Assistance to IBEW*

1. Disparate treatment of IRWA non-employee organizers with respect to campaigning on Respondent's plant premises

Respondent's contract with the IBEW in effect during times material herein provides that representatives of the IBEW "shall have access to the factory premises of the Employer at any time during working hours for the purpose of investigating and adjusting matters covered by or arising under this Agreement." Pursuant to the above provision Cortes and Kingsley requested and were granted permission by Hueuink or Schrader during the preelection period to enter the plant premises either together or individually two or three times a week. As was customary, they met in Respondent's conference room to discuss grievances, complaints, and other union business and to confer with the IBEW stewards, grievants and, if necessary, company officials or supervisors. Usually, grievances were filed verbally and were reduced to writing only if they could not be resolved at the supervisory level. During the period from June 6 to July 17 at least 10 written grievances were filed. Hueuink conceded that Cortes and Kingsley were also granted permission to go into the plant and investigate grievances of employees on the line. Both Hueuink and Schrader testified that they would break up unauthorized meetings between the IBEW representatives and the employees.

Several witnesses for the General Counsel testified that they observed Cortes talking to employees and urging support for the IBEW. Supervisors in the vicinity did not interfere with Cortes' conduct.

The record is clear that Respondent did not permit IRWA nonemployee organizers to distribute campaign material on plant premises or to solicit support for the IRWA.

2. Disparate treatment of IRWA employee organizers with respect to campaigning on Respondent's plant premises

As indicated above, the IRWA campaign was initiated by the IBEW stewards. During the early days of the IRWA's organizing drive most of the IBEW stewards actively solicited IRWA authorization cards from Respondent's employees and passed out IRWA literature on the parking lot and in the Company's cafeteria. Curiously, as the campaign progressed, literature for both the IBEW and the IRWA was distributed by some stewards, apparently without discrimination. In August toward the end of the campaign the stewards' sentiment shifted to the IBEW. However, stewards Gonzalez, Ivan Cruz, Ronald Loyo, and Lydia Santiago continued to pass out material for the IRWA on plant premises without interference by Respondent's officials.[6]

[6] In making this finding I place no reliance on a document dated July 26 and signed by all IBEW stewards repudiating their support for the IRWA and urging support for the IBEW. Kingsley informed the stewards that they could not remain IBEW stewards unless they signed the document. Nevertheless, Gonzalez remained a supporter of the IRWA and Santiago, his close friend, continued her support for the IRWA until a few days before the election.

Literature for both Unions was passed along the assembly lines without interference from Respondent. Baez testified that Santiago passed out IBEW handbills on Baez' assembly line with his permission. According to Baez, his supervisor, Art Kavanaugh, directed that the steward be permitted to pass out any campaign literature that came into the plant without differentiating between the IRWA and the IBEW.

Literature for both Unions was regularly posted on Respondent's bulletin boards except for a single bulletin board that was glass-enclosed and locked.[7] Hueuink and his assistant would tour the plant nightly and remove the literature of both Unions from the bulletin boards. Respondent has about 450 "towveyor" carts that move throughout the plant. During the election campaign signs in English and Spanish appeared in chalk on the carts, advocating that employees vote for the IBEW or the IRWA. Respondent's supervisors would attempt to remove the signs in the evenings.

Buttons for both Unions were worn by the employees without interference from Respondent's officials.

A few days before the election banners were hung from the ceiling advocating, respectively, that employees vote for the IBEW or the IRWA. Hueuink ordered both banners removed.

3. Rejection of the IRWA's request on behalf of IRWA employee organizers

On August 23 Weil, accompanied by IRWA Representatives Frank Woljak, Rick Bugajsky, and Tony Meccia met with Hueuink and Schrader in the latter's office.

The testimony as to what occurred is conflicting.

Weil, corroborated by Bugajsky, testified that they asked Schrader four questions: (1) Whether IRWA nonemployee representatives could pass out literature in the parking lot; (2) whether Halo employees could pass out IRWA literature in the parking lot; (3) whether IRWA nonemployee organizers could pass out IRWA literature in nonworking areas on nonworking time; and (4) whether IRWA employee supporters could pass out IRWA literature in nonworking areas on nonworking time. Schrader replied affirmatively to question (2) and negatively to all other questions.

Hueuink and Schrader denied that they had refused permission for IRWA employee supporters to pass out IRWA literature on nonworking time in nonworking areas.

I credit Hueuink and Schrader. The record is clear that IRWA employee supporters in fact passed out IRWA literature in the parking lot and in the cafeteria during the entire preelection period without interference by Respondent. Certainly, at least since the incident involving the suspensions of Gonzalez and other IRWA supporters, Hueuink and Schrader were well aware of employee rights to distribute campaign literature in nonworking areas on nonworking time. It makes no sense that they would inconsistently grant such permission to IRWA employee supporters with respect to the parking lot, a nonworking area, while denying permission to campaign in other nonworking areas or on nonworking time.

[7] I do not credit the testimony of James Weil that he saw a handbill for the IBEW posted inside the glass-enclosed bulletin board on the day of the election. Having credited Hueuink that he regularly removed literature for both Unions from the bulletin boards, it is most unlikely that he would permit the posting of campaign literature for the IBEW on a bulletin board under the complete control of Respondent on the day of the election.

IV. ANALYSIS AND FINAL CONCLUSIONS OF LAW

A. *Conduct Violative of Section 8(a)(1)*

I find that Respondent violated Section 8(a)(1) of the Act in the following respects:

(1) Supervisor Tony Lizardi's promise of benefit to Santiago Cabrera in mid-August that if Cabrera kept quiet and kept calm and helped to calm down the other employees Lizardi would get Cabrera more money and more benefits in the context of Cabrera's open advocacy of the IRWA and Respondent's opposition to that Union.

(2) Lizardi's threat to Cabrera in mid-August that if the IRWA won the election the employees would go back to making $2.90 per hour.

(3) Lizardi's threat to Cabrera during the preelection period that Respondent would lay off half the employees and maybe even half the supervisors if the IRWA came into the plant.

(4) Lizardi's threat to Cabrera during the preelection period that if the employees continued to try to put in a new union it would end with employees laid off and salaries reduced.

(5) Lizardi's threat to Cabrera during the preelection period that if the employees did not vote for the IBEW Respondent could move the Company to California or any place because McGraw Edison was a big company and had a lot of money.

(6) Lizardi's threat to Cabrera during the preelection period that if Respondent lost the use of the IBEW label the Company would have to lay off half the employees, lay off some of the supervisors, and reduce salaries to $2.90.

(7) Lizardi's promise of benefit to William Velasquez and other employees on or about July 20 to the effect that Lizardi would go to personnel and try to get the employees a raise of 25 cents per hour if they voted for the IBEW.

(8) Lizardi's threat to Velasquez that the employees' salaries would be lower if a new union came into Halo.

(9) Lizardi's threat to Dionisio Perez and other employees during the preelection period that if the employees did not vote for the IBEW the employees would lose benefits and would have to start with minimum wages.

(10) Lizardi's threat to Perez and other employees during the preelection period that the plant could move to another location if the employees did not vote for the IBEW.

(11) Lizardi's solicitation of employee grievances during the preelection period by informing Perez and other employees that Lizardi could set up a meeting with Thomson for them and they could talk to Thomson about whatever they needed, including an increase.

(12) Lizardi's threat to Pedro Fortis in June that if the IBEW lost the election the Company would move the factory to another place.

(13) Lizardi's promise of benefit to Fortis during the preelection period that if the employees supported the IBEW and the IBEW won the election Lizardi would take the employees out to eat and they could drink what they wanted.

(14) Lizardi's threat to Fortis during the preelection period that if the IRWA won the election the Company would pay the employees $2.90 per hour instead of the $5.17 they were making and the employees would not have any kind of benefits.

(15) Lizardi's promise of benefit to Fortis that if Lizardi could legally find out who voted in favor of the IBEW Lizardi would try to get the employees a 25-cent-per-hour increase.

(16) Lizardi's threat to Fortis during the preelection period that if the IBEW lost the election the Company would not be able to use the label and therefore they would move the factory.

(17) Lizardi's threat to Francisco Lopez and other employees in mid-August to stay with the Union the employees had because voting for a new union was like throwing away salaries and no benefits; that if the IRWA won the election that the Company would have to start from the bottom on the Federal rates and from new benefits.

(18) Lizardi's promise of benefit to Lopez and other employes in early August that they could have a better job if they would "stick with us" in the context of Respondent's active campaign on behalf of the IBEW.

(19) Supervisor Castor Colon's threat to Pedro Fortis in August that if the IRWA won the election there was a possibility that the factory would move to another location.

(20) Colon's threat to William Velasquez and other employees in early August that if the IRWA won the election salaries would be lowered and the Company would be obliged to move the plant to another location.

(21) Supervisor Gomer Baez' threat on or about August 22 to an unidentified employee, overheard by Jesus Gonzalez, that if the IRWA won the election the Company would call the Immigration Service and a lot of people who had no legal rights would get into trouble.

(22) Baez' threat to Gonzalez on the same occasion, when Gonzalez objected to Baez' comment, that Gonzalez had better keep going, that he was "hot," thereby implying that Gonzalez was risking discharge or other adverse action by Respondent because of Gonzalez' concern on behalf of the employee and the IRWA.

(23) Baez' threat to Angela Sanchez 2 or 3 weeks before the election that Baez knew Sanchez was for the new Union (IRWA) and she was running the risk of being fired; that if the IBEW won the election Sanchez would be the first one to be fired.

The unfair labor practices found above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

B. *Conduct Not Violative of Section 8(a)(1)*

I find that Respondent did not violate Section 8(a)(1) in the following respects:

(1) President Thomson's prediction to employee Concepcion Ocampo and other employees in the early part of August that the label used by the Company was recognized by the Electrical Workers Union and if the product did not bear that label they would refuse to install it and in refusing to install the products Halo would have less orders, less sales, and less work; President Thomson's similar statements to Jesus Gonzalez in their meetings on June 18 and 25.[8]

I have given long and serious consideration to the above issue, recognizing, as I do, the enormous advantage to the IBEW and the serious detriment to the IRWA if Respondent may lawfully inform its employees immediately prior to a Board election that a vote for the IRWA rather than the IBEW is, in effect, a vote to lose jobs, possibly their own. But the question presented to me in this case is not the impact on the employees of Respondent's repeated warnings that the loss of the IBEW label would have an adverse effect on the Company and its employees. The legality of an employer's preelection statements rests rather on the truth or falsity of such statements and the power of the employer to influence or affect the consequences it predicts. The Supreme Court has held that an employer is free to communicate to its employees his views about unionism and particular unions. He may predict the precise effect unionism will have on its company provided its prediction is based on objective fact "as to demonstrably probable consequences beyond his control." *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 618 (1969). The prediction falls into the category of an unlawful threat if there is any suggestion or implication that the Employer "may or may not take action solely on his own initiative for rea-

[8] Falling into the same category of statements not violative of Sec. 8(a)(1) are statements made by Lizardi to Velasquez and Perez and admittedly made by Lizardi to employees generally during the preelection period when he explained to them the importance of the IBEW label in selling the Company's products and retaining jobs for the employees. Also included is the explanation of Supervisor Vince Monaco to Luz Velasquez in July of a handbill relating to the importance of the IBEW label to the Company and its employees; the prediction of Supervisor Daniel Hueuink to Dionisio Perez and other employees in late July or early August with respect to the loss of the IBEW label, the loss in sales and the loss in employment; the prediction of Traffic Manager Charles Orabutt in mid-August made to Lopez, Fortis, and other employees that if the IBEW label were not on the product it could be a problem if the electricians did not install it, that the loss of the IBEW label would mean a loss of sales for the Company, a loss of jobs because of the loss of business, and there would be layoffs throughout the Company; Supervisors Baez' and Saez' prediction to Angela Sanchez about 2 or 3 weeks before the election that electricians would not install the Company's products if they did not bear the IBEW label with a result that the merchandise would be sent back and employees would be laid off; Director of Distribution Joe Jeffress' explanation to Lopez during the preelection period that the tradesmen would not install the Company's products if they did not have the IBEW label.

Not included, however, as found above, are statements that the loss of the IBEW label would result in half the employees or half the supervisors being laid off. While the loss of business and the loss of jobs, for reasons stated below, was a probable consequence beyond the Employer's control resulting from the loss of the IBEW label, the record will not support such a finding with respect to a specific number of jobs.

sons unrelated to economic necessities and known only to him." *Ibid.*

In the instant case Respondent introduced substantial evidence in support of its position that the right to stamp its products with the IBEW label was an important, if not the most important, factor in the rise of Halo from a small three-man facility to the largest manufacturer in the world of incandescent recessed lighting.

Thomson testified that the Company's first major sale of incandescent lighting fixtures was made in 1956 for the Truman Library in Independence, Missouri. On that occasion the electricans on the jobsite were unwilling to install the lamps because they did not bear the IBEW label. As a result of that experience, the Company sought out the IBEW, the employees of the Company became members of that Union, and a contractual relationship between the IBEW and Respondent has continued from that time until August 31.

Respondent's major competitors all have the use of the IBEW label. These include: Lightolier in Jersey City, New Jersey; Progress Lighting in Philadephia, Pennsylvania; Gotham in the vicinity of Cleveland, Ohio; Omega in Long Island, New York; and Thomas Industries in Kentucky.

Ninety percent of Respondent's sales of lighting fixtures are made in the United States. Ninety-five percent of Respondent's products are sold to distributors or contractors for use in large commercial construction projects such as auditoriums, commercial offices, and shopping centers.

On occasion when Respondent's products were sent to the field without the IBEW label, company officials were reminded that the label was missing. On those occasions Respondent was required either to send IBEW labels to the field for those products or to confirm that Respondent was still affiliated with the IBEW.

Patrick Quinn, eastern regional sales manager for Respondent, testified that in sales presentations he would let the customer know at the outset that the Company was an IBEW Company. During his prior experience as a journeyman electrician on a construction site it was Quinn's custom and that of other electricians to check to see that the electrical product bore the IBEW label, commonly referred to as the "bug." During Quinn's experience in lighting installations Quinn had never come across a union label on an electrical product other than the IBEW label.

Joseph Duffy, business representative of the IBEW, testified that in his experience as a journeyman electrician on a construction site it was normal for the union steward to check whether the fixtures bore the label of a union affiliated with the AFL–CIO. If the fixtures did not show such a label the steward on the job would call the IBEW office to determine whether the manufacturer was a union company. Once that was established the company would be notified to send their labels to the jobsite to be affixed to the fixtures.[9]

[9] Sec. 8(b)(4) of the Act forbids union activity of a secondary nature with respect to the refusal of employees to handle nonunion products. As a union agent, Duffy's testimony was somewhat circumspect in response to questions relating to the practice of IBEW electricians in refusing to install products that did not bear an acceptable union label.

While the General Counsel challenges the conclusions to be drawn from the above testimony, he introduced no evidence to refute the accuracy of such testimony. No witness for the General Counsel testified that journeymen electricians on commercial jobsites would be willing to install electrical fixtures that did not bear the IBEW label. No evidence was introduced to show that a single major competitor of Respondent used a label other than that of the IBEW. In these circumstances the General Counsel's contention that Respondent's expressed concern over the possible loss of the IBEW label amounts to "unfounded speculation" is, to say the least, without merit.

As indicated above, I have reached my conclusion on this issue after serious consideration and on the basis of the evidence presented. Nevertheless, I must say that the General Counsel's bifurcation of the evidence by failing to allege that Respondent's letters and memos to its employees, signed by Thomson himself and Thomson's speech of August 23, specifically referring to the loss of business and the loss of jobs as a result of the loss of the IBEW label are unlawful, has given me pause. Despite the vigor of the General Counsel's argument in his brief, his failure to include in the complaint conduct in written form otherwise alleged to be unlawful in spoken form raises considerable doubt as to his own conviction in this matter.

(2) The conversation of Director of Distribution Joe Jeffress with Santiago Cabrera in the former's office during the last 2 weeks of July, the testimony of Cabrera as to this conversation having been discredited.

(3) Surveillance of union activity: The evidence adduced by the General Counsel is that supervisors of Respondent were present on Respondent's parking lot on June 5, 6, 7, and 8 at times when nonemployee and employee organizers for the IRWA were engaged in soliciting authorization cards from Respondent's employees. No evidence was adduced that Respondent's supervisors noted the names of employees signing cards for the IRWA or that pictures of card signing activity were taken. The evidence is that notes were not taken. Respondent was informed that organizational activity would occur on its parking lot on June 5 and had reason to believe that there was a possibility of violence. In fact, an altercation did occur on one of the above dates requiring the presence of a police officer. Respondent has a right to police anticipated violence on its property and a right to eject nonemployee union organizers from its parking lot. *N.L.R.B.* v. *The Babcock & Wilcox Company*, 351 U.S. 105 (1965). In these circumstances the mere presence of Respondent's supervisors on its parking lot on June 5, 6, 7, and 8 did not constitute unlawful surveillance of union activity.

(4) Cancellation of the company picnic: The evidence does not establish that Respondent's purpose in canceling the picnic scheduled for July or its effect was to interfere with, restrain, and coerce its employees unlawfully in the exercise of their Section 7 rights. For 2 months, including the month of June when the IRWA pursued its organizational drive, Respondent made plans for an elaborate picnic to be enjoyed by the entire complement of plant

employees and their families. It was only upon information volunteered by employees that the picnic might degenerate into conflict between opposing groups of employees that Respondent made the decision at the last minute to cancel the picnic. Lizardi testified as to the emotional temperament of many of Respondent's employees. Their feelings for and against the IRWA ran deep. There was talk of knives and guns. In this context it was understandable that employees would be reluctant to subject their families or themselves to an uncomfortable and possibly violent confrontation between IRWA and IBEW supporters. Indeed, officials of the IRWA decided on June 20 that they would not attend the picnic because of their own concern that such a confrontation might occur.

While Respondent's information that IRWA nonemployee organizers planned to attend the picnic may have been inaccurate, I am satisfied that the question was sufficiently muddy and Respondent's concern sufficiently legitimate to rebut the General Counsel's allegation that the cancellation of the picnic violated Section 8(a)(1).

C. *Conduct Not Violative of Section 8(a)(1) and (2)*

I find that Respondent did not violate Section 8(a)(1) and (2) of the Act in the following respects:

(1) Disparate treatment of IRWA nonemployee organizers with respect to campaigning on plant premises: admittedly, IBEW Officials Cortes and Kingsley were permitted to enter plant premises and investigate grievance problems in the plant proper while IRWA officials were denied access to the plant. It is, however, too well established to require citation of cases that an incumbent union with a contractual right may lawfully exercise that right despite the denial of the same right to an outside union with no representative status. During an election campaign where, as here, there are hundreds of employees it is difficult, if not impossible, to guarantee that the incumbent union will adhere strictly to the terms of the contract and refrain from campaigning on its own behalf. The record shows that Hueuink and Schrader made reasonable efforts to restrict the IBEW officials' contact with employees to legitimate investigation of grievances and conferences with stewards. As a practical matter, this is the most that can be expected of an employer caught in this situation. Inevitably, there were occasions, particularly involving Cortes, who spoke Spanish fluently, when employees would raise questions about various pieces of literature and Cortes would respond. In the balance to be struck between lawful and unlawful assistance such incidents do not rise to the level of unlawful conduct on the part of Respondent in the context of affirmative attempts by Respondent's officials to restrict such activities and the absence of evidence of a policy to permit campaigning by the IBEW while denying such permission to the IRWA.

(2) Disparate treatment of IRWA employee organizers with respect to distribution of literature and posting of campaign materials on Respondent's plant premises: The credited testimony is insufficient to warrant the conclusion that Respondent permitted sympathizers for the IBEW to distribute literature in nonwork areas of the plant on nonwork time and to post campaign materials inside Respondent's plant while denying similar rights to sympathizers of the IRWA.

D. *Objections to the Conduct of the Election*

Included in the IRWA's objections are the following: (1) that the Employer utilized its plant bulletin boards to display IBEW handbills, letters, and other IBEW papers; (2) that the employer and the IBEW representatives met collectively and individually with captive groups of employees in the plant during working hours; and (3) that the Employer distributed letters, pamphlets, and other literature to the employees threatening loss of jobs and other benefits if they were no longer represented by the IBEW.

I find no merit in these objections. For reasons stated above, the allegations of employer favoritism to the IBEW over the IRWA have not been established. Nor does an employer engage in objectionable conduct by meeting with employees for campaign purposes on working time. No evidence was introduced to refute the accuracy of the facts and figures published in Respondent's letters and pamphlets. I have found above that Respondent's oral predictions of a loss of business and loss of jobs as a consequence of the loss of the IBEW label are not violative of Section 8(a)(1). Applying the standard applicable to objections to the conduct of an election, I find such oral and written predictions protected by Section 8(c) and inadequate as a basis for setting the election aside. These objections are dismissed.

Contrary to Respondent, however, the IRWA's objections are broad enough to encompass conduct found above to constitute violations of Section 8(a)(1) and the objections are sustained on the basis of those findings. The IRWA filed its objections "for the reason that on August 29, 1979 and prior thereto, the Employer unduly influenced and coerced employees in the exercise of their rights to a free and independent choice of bargaining representative," including in its objections the above specific objections.

Respondent was on notice at the hearing that the IRWA rested its case on the evidence adduced by the General Counsel with respect to conduct alleged to be unfair labor practices and now, in part, so found. The mere fact that these unfair labor practices were not specifically alleged in the IRWA's timely objections is insufficient to disregard serious objectionable conduct within the critical preelection period that unduly influenced the employees in their choice of a bargaining representative. *Decoto Aircraft Inc.*, 209 NLRB 1034 (1974), 512 F.2d 758 (9th Cir. 1975), cert. denied 423 U.S. 836.

I shall recommend that the election held on August 29 be set aside and that the Regional Director for Region 13 conduct a new election in accordance with the Board's established Rules and Regulations.

[Recommended Order omitted from publication.]